

FCC MAIL SECTION

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 Before the  
 Federal Communications Commission  
 Washington, D.C. 20554

DISPATCHED BY

MM Docket No. 94-66

In the Matter of

Amendment of Section 73.202(b), RM-8469  
 Table of Allotments,  
 FM Broadcast Stations.  
 (Tyler, Fairfield and  
 Commerce, Texas)<sup>1</sup>

**REPORT AND ORDER**  
**(Proceeding Terminated)**

Adopted: April 6, 1995;

Released: April 14, 1995

By the Chief, Allocations Branch:

1. At the request of Gleiser Communications, Inc. ("petitioner"), licensee of Station KDOK(FM), Channel 221A, Tyler, Texas, the Commission has before it the *Notice of Proposed Rule Making*, 9 FCC Rcd 3213 (1994) proposing the substitution of Channel 221C3 for Channel 221A at Tyler and modification of Station KDOK(FM)'s license to specify operation on the higher powered channel. In order to accommodate the upgrade at Tyler, an *Order to Show Cause* was issued to Freestone Broadcasting Company, Inc. ("Freestone") and KEMM Communications, Inc., respective licensees of Stations KNES(FM), Channel 221A, Fairfield, Texas, and KEMM(FM), Channel 221A, Commerce, Texas, directing the licensees to demonstrate why their licenses should not be modified to specify operation on Channels 256A and 277A in lieu of Channel 221A, respectively. Petitioner filed comments reiterating its intention to apply for Channel 221C3 and to reimburse the licensees of Stations KNES(FM) and KEMM(FM) for the reasonable cost associated with the change in channels at Fairfield and Commerce, Texas. In response to the *Order to Show Cause*, Freestone and Russell-Fields, Inc. ("RFI")<sup>2</sup> filed joint comments. Petitioner filed reply comments.<sup>3</sup>

2. Freestone and RFI filed comments stating they have no objection to the proposed substitution of channels at Fairfield and Commerce if the two existing licensees are compensated for all of their expenses incurred. They further state that they will only agree to the channel changes if they are compensated to the extent that their respective stations could operate on the new frequencies without fi-

nancial distress by the channel change. Both submit that any change in frequency at either facility will create major confusion for the two stations' advertisers and listeners, which in turn would most certainly negatively impact on their ability to generate revenue. Finally, Freestone and RFI state any change in operating frequencies without the compensation would severely endanger the ability of their stations to remain viable business entities and provide local broadcast service to the communities where they are licensed.

3. After carefully reviewing the pleading before us, we believe the public interest would be served by substituting Channel 221C3 for Channel 221A at Tyler; the substitution of Channel 256A for Channel 221A at Fairfield; and the substitution of Channel 277A for Channel 221A at Commerce, since it could enable Station KDOK(FM) to expand its coverage area. With respect to the issues raised by Freestone and RFI, the reimbursement costs incurred by the affected stations, both technical and promotional, are left to the good faith negotiation of the parties involved. Reimbursement of costs incurred by the affected stations is governed by the guidelines set forth in *Circleville, Ohio*, 8 FCC Rcd 2d 159 (1967). In this instance, petitioner has acknowledge its responsibility to reimburse Freestone and RFI for the reasonable costs associated with the change in frequency for Station KNES(FM) and Station KEMM(FM).

4. Channels 221C3, 256A, and 277A can be allotted to Tyler, Fairfield and Commerce, respectively, in compliance with the Commission's minimum distance separation requirements. Channel 221C3 can be allotted to Tyler with a site restriction of 1.6 kilometers (1.0 miles) west to accommodate petitioner's desired site.<sup>4</sup> Channel 256A and Channel 277A can be allotted Fairfield and Commerce, respectively, at the transmitter sites specified in Station KNES(FM)'s and Station KEMM(FM)'s authorizations.<sup>5</sup> As requested, we will also modify Station KDOK(FM), Station KNES(FM) and Station KEMM(FM)'s authorizations to specify operation of Channel 221C3, Channel 256A and Channel 277A, respectively.

5. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED. That effective **May 29, 1995**, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the community listed below, to read as follows:

City	Channel No.
Tyler, Texas	221C3, 226C1, 268C, 281C2,
Fairfield, Texas	256A
Commerce, Texas	277A

<sup>1</sup> The communities of Fairfield and Commerce, Texas, have been added to the caption since they were inadvertently omitted.

<sup>2</sup> Russell-Fields Inc. is the licensee of Station KEMM(FM), pursuant to the Commission's grant of the assignment of license on November 22, 1991.

<sup>3</sup> Petitioner's reply comments were untimely filed and were not accompanied by a request for acceptance. Therefore, petitioner's reply comments will not be considered.

<sup>4</sup> The *Notice* provided incorrect coordinates (North Latitude 32-20-42 and West Longitude 95-10-08) for Channel 221C3 at Tyler. The correct coordinates for Channel 221C3 at Tyler are North Latitude 32-20-42 and West Longitude 95-19-08.

<sup>5</sup> The coordinates for Channel 256A at Fairfield are North Latitude 31-41-52 and West Longitude 96-09-44. The coordinates for Channel 277A at Commerce are North Latitude 33-11-40 and West Longitude 96-01-20.

6. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the license of Gleiser Communications, Inc., for Station KDOK(FM), Tyler, Texas, IS MODIFIED to specify operation on Channel 221C3, in lieu of Channel 221A, subject to the following conditions:

(a) Within 90 days of the effective date of this Order, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301).

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620.

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules.

7. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the licenses of Freestone Broadcasting Company, Inc. and KEMM Communications, Inc. for Stations KNES(FM) and KEMM(FM), Fairfield and Commerce, respectively, IS MODIFIED to specify operation on Channel 256A and Channel 277A, in lieu of Channel 221A, subject to the following conditions:

(a) Nothing contained herein shall be construed as authorizing any change in Stations KNES(FM) and Station KEMM(FM)'s licenses, except the channels as specified above. Any other changes, except those specified under Section 73.1690 of the Rules, require prior authorization pursuant to an application for construction permit (FCC Form 301).

(b) Program tests may be conducted in accordance with the provisions of Section 73.1620 of the Rules, PROVIDED the transmission facilities comply in all respects with licenses BLH-850528KF and BLH-820112AA, except for the channels as specified above and a license application (FCC Form 302) is filed within 10 days of commencement of program tests.

8. IT IS FURTHER ORDERED, That the Secretary shall send a copy of this Report and Order by Certified Mail, Return Receipt Requested, to the licensees, as follows:

Freestone Broadcasting Company, Inc.

P.O. Box 347

Fairfield, Texas 75840

[Licensee of Station KNES(FM)]

Russell-Fields, Inc.

c/o of KEMM Communications, Inc.

900 Jackson

Dallas, Texas 75202

[Licensee of Station KEMM(FM)]

9. Pursuant to Commission Rule Section 1.1104(1)(k) and (2)(k), any party seeking a change of community of license of an FM or television allotment or an upgrade of an existing FM allotment, if the request is granted, must submit a rule making fee when filing its application to implement the change in community of license and/or upgrade. As a result of this proceeding, Gleiser Communications, Inc., licensee of Station KDOK(FM), is required to submit a rule making fee in addition to the fee required for the applications to effect the change in community of license and/or upgrade.

10. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

11. For further information concerning this proceeding, contact Pam Blumenthal, Mass Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos

Chief, Allocations Branch

Policy and Rules Division

Mass Media Bureau